



Office of the Attorney General

State of Texas

October 30, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Richard D. Monroe
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR92-634

Dear Mr. Monroe:

You ask whether certain information requested by Ms. Camille Carpenter is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17273.

The Department of Transportation (the department) received Ms. Carpenter's request for information under the Open Records Act on August 20, 1992. You requested a decision from this office on September 8, 1992. Consequently, you failed to request a decision within the 10 days required by section 7(a) of the act.

Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *id.* A compelling interest exists if the information is deemed confidential by law or if an exception designed to protect third party interests is applicable. See Open Records Decision No. 552 (1990) at 1.

You have not shown compelling reasons why the information at issue should

be withheld.¹ The information is presumed to be public; the department must therefore release this information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-634.

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Opinion Committee

KHG/RWP/lmm

Ref: ID# 17273
ID# 17516

Enclosure: Open Records Decision No. 579

cc: Ms. Camille Carpenter
8903 River Ridge
Texarkana, Texas 75501
(w/o enclosure)

¹You assert that the requested information is excepted from public disclosure on the basis of false-light privacy as incorporated into the Open Records Act by section 3(a)(1). Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The gravamen of a false-light privacy complaint is not that the information revealed is confidential, but that it is false. *See* Open Records Decision No. 579 (1990) at 6. Therefore, information actionable under the tort doctrine of false-light privacy is not within section 3(a)(1) protection of information deemed confidential by law. *Id.* If, however, portions of the requested record are in fact inaccurate or untrue, there is no reason that the department may not also release, along with the requested document, other supplemental information that explains why and to what extent the information is inaccurate or that otherwise clarifies the information contained in the record at issue.